



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

KING & SPALDING
1185 AVENUE OF THE AMERICAS
NEW YORK NY 10036-4003

COPY MAILED

APR 25 2008

In re Application :
Slaughaupt, et al. :
Application No. 10/041,856 : DECISION ON APPLICATION
Filed: January 7, 2002 : FOR PATENT TERM ADJUSTMENT
Atty Docket No. 13572-105039US1 :

This is a decision on the "REQUEST FOR CORRECTION OF PATENT TERM ADJUSTMENT UNDER 37 C.F.R § 1.705(b)", filed November 30, 2007. Applicants request that the initial determination of patent term adjustment under 35 U.S.C. 154(b) be increased from the currently accorded zero (0) days to five hundred one (501) days.

For the reasons set forth below, a decision on the request for reconsideration of the patent term adjustment indicated on the patent is being **HELD IN ABEYANCE** until after the actual patent date.

Patentees are given TWO (2) MONTHS from the issue date of the patent to file a written request for reconsideration of the patent term adjustment for Office failure to issue the patent within 3 years. A copy of this decision should accompany the request. Patentees may seek such consideration without payment of an additional fee. However, as to all other bases for seeking reconsideration of the patent term adjustment indicated in the patent, all requirements of § 1.705(d) must be met. Requests for reconsideration on other bases must be timely filed and must include payment of the required fee.

On November 14, 2007, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment (PTA) to date is zero (0) days. On November 30, 2007,

Applicants timely¹ submitted the instant application for patent term adjustment.

Applicants state that the patent issuing from the application is not subject to a terminal disclaimer.

The Office initially determined a patent term adjustment of zero (0) days based on an adjustment of four hundred sixty-eight (468) days of PTO delay pursuant to 35 U.S.C. 154(b)(1)(A)(i) and 37 C.F.R. § 1.703(a)(1), reduced by applicants' delays of sixty-two (62), ninety-two (92), ninety-nine (99), ninety-two (92), and ninety-two (92) days pursuant to 37 C.F.R. § 1.704(b), and forty-one (41) days pursuant to 37 C.F.R. 1.704(c)(8). All periods of adjustment have been reviewed and found to be correct.

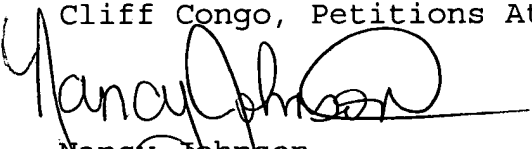
However, applicants assert additional PTO delay for the failure on the part of the Office to issue the patent within three years of its filing. The Office will be able to assess whether or not any additional PTA is accorded once the issue date is established.²

In view thereof, the correct determination of patent term adjustment at the time of the mailing of the Notice of Allowance is zero (0) (468 days of PTO delay, reduced by 478 days of applicant delay).

Receipt of the \$200 fee is acknowledged.

The application is being forwarded to the Office of Patent Publication for processing into a patent.

Telephone inquiries specific to this matter should be directed to Cliff Congo, Petitions Attorney, at (571)272-3207.


Nancy Johnson
Senior Petitions Attorney
Office of Petitions

¹ Applicants filed the application for patent term adjustment together with the payment of the issue fee.

² Applicants should note that if an application is entitled to an adjustment under 35 U.S.C. 154(b)(1)(B), the entire period of pendency before the Office except for periods excluded under 35 U.S.C. (b)(1)(B)(i)-(iii), and not just the period beginning three years after the actual filing date of the application, is the period of delay under 35 U.S.C. 154(b)(1)(B) in determining whether periods of delay overlap under 35 U.S.C. 154(b)(2)(A).